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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			PIERCE, JEREMY R	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/754,026

Applicant(s)

BAER ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on August 20, 2004 has been entered. Claims 31, 36, 45, 47, and 57 are amended. The amendment is sufficient to overcome the 35 USC 112, 2nd paragraph rejection to claims 31-35 and 47-51 set forth in section 7 of the last Office Action because the claim 31 has been amended to recite at least one material composition and claim 47 has been amended to recite that the natural fibers break free from the gatherable layer. The amendment is also sufficient to overcome the 35 USC 102/103 rejection of claims 31-41, 43, 44, 52, 54, and 57 over Jackson et al. (U.S. Patent No. 4,741,944) set forth in section 10 of the last Office Action because claims 31, 36, and 56 have been amended to recite the wipe comprises natural fibers. Jackson et al. do not disclose natural fibers.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 31-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

Art Unit: 1771

which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 31 and 36 recite a third mode where the wet-wipe has a second thickness that is increased from the third thickness. However, the specification does not enable one skilled in the art how to make the wet-wipe have increased thickness after stretching. The specification does disclose that upon stretching and recovery of the wet-wipe, the thickness of the gatherable layer is increased (page 46, lines 16-19). However, Applicant does not state how such a composite wet-wipe having an elastic layer and a gatherable layer is made so that the feature of increased thickness becomes present. Why does this wet-wipe have an increased thickness after stretching and recovery, whereas other wipes having a gatherable layer and an elastic layer do not? The specification does not provide the feature that creates this limitation.

Claim 47 recites "during stretching, the natural fibers of the at least one gatherable layer break free from adjacent material allowing the natural fibers of the at least one gatherable layer to decompress to an increased thickness." However, this is not enabled by the specification. Why does an increased thickness result from decompression of the natural fibers? The specification does not discuss decompression of the fibers, so it is unclear how this is the mechanism that creates increased thickness.

Claim 57 recites "means for increasing the thickness of the wet-wipe from a first, storage mode to a second, use mode." While the specification discloses that stretching and recovery cause an increased thickness in the wet-wipe, the specification fails to

Art Unit: 1771

teach how this the invention is distinguish from anything in the prior art because wipes made with an elastic layer and gatherable layer were made with the purpose of stretching and recovering. Applicant does not enable a person skilled in the art how the stretching and recovery provide an increased thickness. The claimed increased thickness property is not enabled.

4. Claims 47-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 47 recites "during stretching, the natural fibers of the at least one gatherable layer break free from adjacent material allowing the natural fibers of the at least one gatherable layer to decompress to an increased thickness." There is no support in the specification for this limitation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1771

6. Claims 31-41, 43-46, 52, 54, and 57 are rejected under 35 U.S.C. 103(a) as obvious over Jackson et al. (U.S. Patent No. 4,741,944) in view of Taylor (U.S. Patent No. 4,781,966).

Jackson et al. disclose a wet-wipe that includes an elastic nonwoven web joined to a gathered non-elastic web of spunbonded fibers (column 4, lines 51-64). Jackson et al. disclose the wet-wipe is stretched in the direction of the elasticity upon removal of the wipe from the container (column 6, lines 6-24). Jackson et al. do not disclose the inclusion of natural fibers. Taylor also discloses a multi-layer wet-wipe comprising an elastic layer joined to spunbonded nonelastic layers (column 4, line 60 –column 5, line 55). Taylor teaches the nonelastic layer may also include rayon or wood pulp fibers (Abstract). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include rayon or wood pulp fibers in the nonelastic layers of Jackson et al. in order to provide increased absorbency and softness, as taught to be known by Taylor. Although Jackson et al. do not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic nonwoven web and a gathered non-elastic nonwoven web) and in the similar production steps (i.e. bonding the non-elastic web to the elastic web so that it is gathered when the composite is relaxed) used to produce the wet-wipe. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the dispensing arrangement process disclosed by Jackson et al. would obviously have provided the

claimed thickness change. With regard to claims 32 and 34, the wet-wipe disclosed by Jackson et al. is capable of stretching between 5 and 30% its original length. With regard to claims 33, 35, and 54, the amount of thickness gain and density loss would be inherent or obviously provided for the same reasons set forth above, i.e. using similar materials in a similar process. If not inherent, the claimed change in thickness would be obvious to provide as a matter of adjusting a result effective variable. The change in thickness would affect the resulting loft, and thus softness of the wet-wipe. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have the change in thickness be about 18% in order to provide the desired amount of softness to the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to claims 37, 40, 41, and 43, Jackson et al. do not provide density, cup crush, or tensile strength values of the web. As stated before, since Jackson et al. disclose similar materials made with a similar process to make a similar product, the claimed properties would likely be inherent in the composite of Jackson et al. If not inherent, density, cup crush, and tensile strength are all properties that are known to be adjustable in the art of making nonwoven fabrics. Adjusting the result effective variables of density, cup crush, and tensile strength would alter the wet-wipe's loft, flexibility, strength, and durability in use. It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the density, cup crush, and tensile strength of the wipe of Jackson et al. in order to obtain the desired loft, flexibility, strength, and durability in the wet-wipe, since it has been held

that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claims 38 and 39, Jackson et al. disclose using preservatives, fragrances, emollients, humectants, detergents, and soaps (column 4, lines 59-60).

With regard to claim 52, Jackson et al. disclose the liquid to comprise up to about 160 percent by weight (column 14, line 36). With regard to claim 57, Applicant discloses in the specification that the increase in thickness is obtained from the stretching and recovery of the composite (page 10, lines 5-6). Jackson et al. disclose the wipe is stretched upon removal from the dispenser (column 6, lines 3-26).

7. Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Taylor as set forth above, and further in view of Lang et al. (U.S. Patent No. 6,429,261).

Jackson et al. do not disclose a thickness of the wet-wipe. Lang et al. teach that wet wipes typically have a thickness between 0.2 and 1 mm (column 41, lines 1-2). It would have been obvious to one having ordinary skill in the art at the time of the invention to make the wet-wipe with a thickness of 0.9 mm or 1.0 mm, in order to create a composite material with a thickness suitable for use as a wet-wipe, as taught by Lang et al.

8. Claims 31-37, 40, 41, 43-47, and 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman (U.S. Patent No. 4,606,964) in view of Jackson et al.

Wideman disclose a web of elastic material bonded to at least one gatherable web. Wideman discloses the gatherable web may be made from combinations of natural and synthetic fibers (column 6, lines 14-34). Wideman discloses the composite

may be used as a baby wipe (column 8, lines 13-14), but do not disclose the wipe to have different modes or to be contained in any manner. Jackson et al. disclose a wet-wipe container where the wet-wipes are stretched in the direction of the elasticity upon removal of the wipe from the container (column 6, lines 6-24). It would have been obvious to one having ordinary skill in the art at the time of the invention to contain the wet-wipes disclosed by Wideman in the manner disclosed by Jackson et al. in order to give the user a positive indication of removal, as taught by Jackson et al. Although Wideman does not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. an elastic nonwoven web and a gathered non-elastic nonwoven web) and in the similar production steps (i.e. bonding the non-elastic web to the elastic web so that it is gathered when the composite is relaxed) used to produce the wet-wipe. The burden is upon the Applicant to prove otherwise. In the alternative, the dispensing arrangement process disclosed by Jackson et al. would obviously have provided the claimed thickness change. With regard to claims 32 and 34, the wet-wipe disclosed by Wideman is capable of stretching between 5 and 30% its original length. With regard to claims 33, 35, and 54, the amount of thickness gain and density loss would be inherent or obviously provided for the same reasons set forth above, i.e. using similar materials in a similar process. If not inherent, the claimed change in thickness would be obvious to provide as a matter of adjusting a result effective variable. The change in thickness would affect the resulting loft, and thus softness of the wet-wipe. It

Art Unit: 1771

would have been obvious to a person having ordinary skill in the art at the time of the invention to have the change in thickness be about 18% in order to provide the desired amount of softness to the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claims 37, 40, 41, and 43, Wideman does not provide density, cup crush, or tensile strength values of the web. As stated before, since Wideman discloses similar materials made with a similar process to make a similar product, the claimed properties would likely be inherent in the composite of Wideman. If not inherent, density, cup crush, and tensile strength are all properties that are known to be adjustable in the art of making nonwoven fabrics. Adjusting the result effective variables of density, cup crush, and tensile strength would alter the wet-wipe's loft, flexibility, strength, and durability in use. It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the density, cup crush, and tensile strength of the wipe of Wideman in order to obtain the desired loft, flexibility, strength, and durability in the wet-wipe, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to claim 55, Wideman does not disclose a thickness of the composite after it is removed from the container. It would have been obvious to one having ordinary skill in the art at the time of the invention to make the wet-wipe within the range of 1.0 mm to 1.7 mm, since such a modification would have involved a mere change in the size of a component. With regard to claim 56, Wideman does not disclose a thickness of the composite while it is still in the container. It would have been obvious to one having ordinary skill in the art at the time

of the invention to make the wet-wipe with a thickness of less than 0.9 mm, since such a modification would have involved a mere change in the size of a component. With regard to claim 57, Applicant discloses in the specification that the increase in thickness is obtained from the stretching and recovery of the composite (page 10, lines 5-6). The wipe of Wideman would be stretched upon removal from the dispenser, as taught by Jackson et al. (column 6, lines 3-26).

9. Claims 38, 39, and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman in view of Jackson et al. and further in view of Buczwinski et al. (U.S. Patent No. 5,785,179).

With regard to claims 38, 39, 48, 49, 52, and 53, Wideman does not disclose the necessary information to impregnate the baby wipe with cleaning solution. Buczwinski et al. disclose baby wipes are impregnated with water, emollient, surfactant, and preservative in an amount of between 150 and 600 percent by weight of the wipe (column 5, lines 28-45). It would have been obvious to one having ordinary skill in the art at the time of the invention to impregnate the wipe of Wideman with between 150 and 600 percent by weight of cleaning solution in order to use the composite as a baby wipe, as taught by Buczwinski et al. With regard to claims 50 and 51, Wideman does not disclose an appropriate ratio of natural to synthetic fibers. Buczwinski et al. disclose that coform webs used as baby wipes typically comprise between 30 and 40 percent by weight of synthetic fibers (column 5, lines 23-27). It would have been obvious to one having ordinary skill in the art at the time of the invention to use between 60 and 70

Art Unit: 1771

percent by weight natural fibers in the non-elastic layer of Wideman in order to better use the composite as a baby wipe, as taught by Buczwinski et al.

10. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Taylor as set forth above, and further in view of Buczwinski et al.

Jackson et al. do not disclose the liquid to be present in an amount of about 300% by dry weight of the composite material. Buczwinski et al. disclose baby wipes are impregnated with water, emollient, surfactant, and preservative in an amount of between 150 and 600 percent by weight of the wipe (column 5, lines 28-45). It would have been obvious to one having ordinary skill in the art at the time of the invention to impregnate the wipe of Jackson et al. with 300 percent by weight, since the value is encompassed by the range disclosed in Buczwinski et al., and it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art.

11. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. in view of Taylor as set forth above, and further in view of Wright (U.S. Patent No. 5,385,775).

Jackson et al. do not disclose the elastic layer to have its fibers arranged in a substantially parallel configuration. Wright teaches that using parallel elastic fibers in a composite gatherable web offers improved tenacity in one direction (Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to use substantially parallel fibers in the elastic layer of Jackson et al. in order to provide

Art Unit: 1771

improved tenacity in the stretching direction with the gathers being aligned in a parallel fashion (column 6, line 4).

12. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wideman in view of Jackson et al. as set forth above and further in view of Wright.

Wideman does not disclose the elastic layer to have its fibers arranged in a substantially parallel configuration. Wright teaches that using parallel elastic fibers in a composite gatherable web offers improved tenacity in one direction (Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to use substantially parallel fibers in the elastic layer of Wideman in order to provide improved tenacity in the stretching direction with the gathers being aligned in a parallel fashion (column 6, line 4).

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1771

14. Claims 31-57 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-31 and 33-36 of copending Application No. 09/751,329. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims relate to a non-woven elastic layer bonded to a non-woven gatherable layer at least two points, and the resulting properties of thickness change are likely to be inherent because of the similarity of the materials.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

15. Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

16. Applicant argues that the specification does provide enablement commensurate with the scope of claims 31 and 36. The Examiner agrees that the specification does disclose how to manufacture a wet-wipe. However, the claims go beyond the scope of manufacturing a wet-wipe because they include the feature of thickness increase after stretching. There is no enablement as to the limitation of claimed thickness increase. Nothing in the specification teaches how to provide this feature. Manufacturing an elastic composite with gatherable webs is common in the art. Applicant does not provide a person with ordinary skill in the art with any knowledge as to why the claimed feature presents itself in this invention and not the prior art. Why does this wet-wipe

Art Unit: 1771

have an increased thickness after stretching and recovery, whereas other wipes having a gatherable layer and an elastic layer do not? Applicant further asserts that the previous Office Action admits "[T]he specification ... enables that stretching and recovery causes an increased thickness in the wet-wipe." However, the use of the word "enables" was a typo. The sentence should have used "discloses" instead. There was no admission to enablement in the last Office Action, since the rejection was based on a lack of enablement.

17. Applicant argues that the limitation of claim 47 is supported throughout the specification, but that claim 47 has been amended to clarify the inventive subject matter. However, claim 47 was originally rejected because it contained new matter. The new matter was not eliminated in the present amendment. Furthermore, Applicant added more new matter that is also not supported by the specification. A new matter rejection cannot be overcome by amending to incorporate additional new matter. Applicant must point out how these limitations are supported by the specification.

18. Applicant argues that Jackson does not teach the use of natural fibers. The Examiner agrees, and new grounds of rejection have been set forth because of the amended claims. Although Applicant asserts Jackson teaches away from natural fibers, the Examiner disagrees. Jackson teaches it is advantageous to use spunbonded fibers over cellulosic webs, but this does not exclude the presence of some natural fibers in the synthetic webs. Jackson also only views this property as an interesting observation, not a preferred embodiment.

Art Unit: 1771

19. Applicant argues that Jackson cannot be properly combined with Wideman because a person of ordinary skill in the art would be discouraged from doing so. However, Applicant fails to address the motivation set forth by the Examiner in combining Jackson with Wideman.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

Art Unit: 1771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

JRP

November 10, 2004

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER